
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---------------------------|---|-----------------------------------|
| In the Matter of |) | File No. EB-01-PA-238 |
| |) | |
| Networx Corporation |) | NAL/Acct. No. 200232400001 |
| 1 Fishers Road |) | |
| Pittsford, New York 14534 |) | FRN # 0006-0222-97 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 10, 2002

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Networx Corporation (“Networx”) has apparently violated Section 301 of the Communications Act of 1934, as amended,¹ (“the Act”) by operating an unlicensed FM broadcast station on the frequency 94.5 MHz at the Cumberland Crossings Retirement Community in Carlisle, Pennsylvania. We conclude that Networx is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On or about October 19, 2000, the Enforcement Bureau’s Philadelphia Office received information from the engineer of a local radio station that an unlicensed FM broadcast station was allegedly operating in the Newtown Square, Pennsylvania area on the frequency 105.7 MHz.

3. On that same day, FCC agent David Dombrowski of the Philadelphia Office used direction finding techniques to locate the source of the transmissions on the frequency 105.7 MHz to the Dunwoody Village, 3500 West Chester Pike, Newtown Square, Pennsylvania 19073. The FCC agent observed that the transmissions from the station could be detected with a standard car radio approximately 0.5 mile from the Dunwoody Village. Nancy Morrison, the Recreation Director, permitted agent Dombrowski to inspect the FM broadcast station. Nancy Morrison explained that the Dunwoody Village subscribes to an FM broadcast service on the frequency 105.7 MHz called “Companion Radio.” Networx Corporation installed and operates the FM broadcast station equipment at the Dunwoody Village to provide the service.

4. Radio stations in the FM broadcast band, *i.e.*, broadcast stations that transmit on a frequency between 88 and 108 MHz, must be licensed by the FCC (47 U.S.C. § 301). The only exception to this

¹ 47 U.S.C. § 301.

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licensing requirement in the FM broadcast band is for certain non-licensed low-power radio transmitters operating at a power level that complies with 47 C.F.R. § 15.239.² This section limits such transmitters to the field strength of 250 $\mu\text{V/m}$ at a distance of three meters from the transmitting antenna. On October 23, 2000, Agent Dombrowski returned to Dunwoody Village and used a calibrated Potomac FIM-71 Field Strength Meter to make a measurement of the station's signal at a distance of 100 feet from the antenna. The FCC agent measured a field strength of 1,785 $\mu\text{V/m}$ on the frequency 105.7 MHz. The FCC agent used extrapolation to calculate the signal strength at three meters from the station's antenna. The agent determined that the station's signal exceeded the permissible level for a non-licensed radio transmitter by 73 times. Accordingly, a license is required for the operation of the station. Based on the Commission's records, no license has been issued for the operation of an FM broadcast station at this location. Thus, the station was operating in violation of Section 301 of the Act.

5. On October 30, 2000, the Philadelphia Office sent Networx a letter warning that operation of the unlicensed FM broadcast station on the frequency 105.7 MHz at the Dunwoody Village violated Section 301 of the Act; outlined the potential penalties for operating the unlicensed station in violation of Section 301 of the Act, including seizure of the equipment, fines and imprisonment; and directed Networx to terminate operation of the unlicensed station immediately. The Philadelphia Office requested Networx Corporation to submit a written response within 10 days of receipt of the letter.

6. By letter dated November 9, 2000, Ken Unger, the President of Networx Corporation, submitted a response to the Philadelphia Office. Networx Corporation acknowledged that all equipment utilized in its installations remains the property of and is exclusively maintained by Networx Corporation. Networx Corporation explained that it intended that its installations comply with the field strength limits specified under Section 15.239 of the Rules. Networx Corporation did not dispute the field strength measurements made by the Philadelphia Office and stated that the Potomac Model FIM-71 is substantially more accurate than the equipment Networx Corporation utilized to determine compliance. Networx Corporation stated that it had ceased operation of the FM broadcast station at the Dunwoody Village on or about October 25, 2000. Networx Corporation assured that it would purchase a Potomac Model FIM-71 Field Strength Meter to conduct more accurate measurements and confirm that its facilities are operated within the limits specified in 47 C.F.R. § 15.239.

7. On August 22, 2001, the Philadelphia Office received information from the engineer of radio station WDAC that a station was causing harmful interference to the reception of WDAC on the frequency 94.5 MHz in Carlisle, Pennsylvania. The offending station was identifying itself as "Companion Radio." A listener of WDAC who lives on Strayer Drive in Carlisle, Pennsylvania informed the Philadelphia Office that "Companion Radio" completely wipes out the reception of WDAC at her residence.

8. On August 23, 2001, FCC agents Trent Williams and David Dombrowski used direction-finding techniques to locate the source of the broadcasts on 94.5 MHz to the Cumberland Crossings Retirement Community, 1 Longsdorf Way, Carlisle, Pennsylvania 17013. Kathleen Bolden, the Director of Personal Care, permitted the FCC agents to inspect the station. Kathleen Bolden explained that Cumberland Crossings Retirement Community subscribes to an FM broadcast service on the frequency 94.5 MHz called "Companion Radio." Networx Corporation installed and operates the radio equipment at the Cumberland

² 47 C.F.R. § 15.239.

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Crossings Retirement Community to provide the service.

9. Subsequently, agent Dombrowski and agent Williams used a calibrated Potomac FIM-71 Field Strength Meter to make measurements of the station's signal at a distance of 105 feet from the antenna. The FCC agents measured a field strength of 8,841 $\mu\text{V/m}$ on the frequency 94.5 MHz. The FCC agents used extrapolation to calculate the signal strength at three meters from the station's antenna. The agents determined that the station's signal exceeded the permissible level for a non-licensed radio transmitter by 377 times. Accordingly, a license is required for the operation of the station. Based on the Commission's records, no license has been issued for the operation of an FM broadcast station at this location. Thus, the station was operating in violation of 47 U.S.C. § 301.

III. DISCUSSION

10. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act." As explained above, Networx Corporation operated an unlicensed FM broadcast station at the Cumberland Crossings Retirement Community after the Philadelphia Office had warned Networx Corporation in writing that the operation of its FM broadcast station at the Dunwoody Village was in violation of Section 301 of the Act.

11. Based on the evidence before us, we find that Networx Corporation has willfully³ violated Section 301 of the Act, as amended, by operating an unlicensed station at the Cumberland Crossings Retirement Community in Carlisle, Pennsylvania on August 23, 2001. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount at ten thousand dollars (\$10,000) for the operation of an unlicensed station. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁵ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Networx Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for operating unlicensed

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

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stations in violation of Section 301 of the Act.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Networx Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. **200232400001** and FRN # **0006-0222-97**.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. **200232400001**.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Networx Corporation, 1 Fishers Road, Pittsford, New York 14534.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

⁷ See 47 C.F.R. § 1.1914.